

Message Text

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PAGE 01 USUN N 01414 01 OF 02 062306Z

64

ACTION DLOS-04

INFO OCT-01 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00 DOTE-00

EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02 INR-07

INT-05 IO-11 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 OIC-02 AF-06 ARA-06 EA-07 EUR-12 NEA-10 /154 W

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R 062133Z APR 76

FM USMISSION USUN NY

TO SECSTATE WASHDC 6715

INFO AMEMBASSY MOSCOW

AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY LIMA

AMEMBASSY TOKYO

AMEMBASSY BANGKOK

AMEMBASSY CANBERRA

AMEMBASSY BONN

AMEMBASSY WARSAW

AMEMBASSY OSLO

AMEMBASSY SINGAPORE

AMEMBASSY THE HAGUE

AMEMBASSY NAIROBI

AMEMBASSY KUWAIT

AMEMBASSY ISTANBUL

AMEMBASSY COLOMBO

AMEMBASSY SOFIA

AMEMBASSY LUSAKA

C O N F I D E N T I A L SECTION 1 OF 2 USUN 1414

FROM LOS DELEGATION

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PAGE 02 USUN N 01414 01 OF 02 062306Z

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: COMMITTEE I INFORMAL MEETING, MARCH 30, 1976

REF: (A) USUN 1157

(B) USUN 1164

BEGIN SUMMARY- COMMITTEE I MET MARCH 30, 1976 TO DISCUSS THE REMAINING PARAGRAPHS OF ANNEX I. MAJOR POINTS RAISED DURING GENERAL DEBATE APPEAR BELOW. END SUMMARY.

1. PARA 1, ANNEX I (RIGHTS IN THE AREA AND ITS RESOURCES).

U.S. REP (ESKIN) CHARACTERIZED PARA 1 AS CONFUSING AND UNNECESSARY TO BASIC CONDITIONS SINCE THE CONCEPTS OF "ALIENATION" AND "COMMON HERITAGE" INCLUDED IN PARA 1 ARE COVERED IN ARTICLES 3 AND 4 OF PART I OF THE SNT REP URGED PARA 1 BE DELETED. USSR (KASMIN) SUPPORTED U.S. POSITION.

2. PARA 2, RIGHTS IN MINERALS). U.S. REP SUPPORTED BY UK (WOOD) AND USSR INDICATED THAT PARA 2 RAISES THE ISSUE OF WHEN A CONTRACTOR ACQUIRES TITLE TO THE RESOURCES. REP EXPLAINED THAT TITLE SHOULD BE PASSED TO THE CONTRACTOR AT THE TIME THE RESOURCES ARE RECOVERED FROM THE AREA AND THAT ANNEX I SHOULD SO PROVIDE.

3. PARA 3, (ACCESS TO THE AREA AND ITS RESOURCES). UK (WOOD) SUGGESTED DELETING CHAPEAU OF PARA 3 AND SUBPARA (B) OF PARA3. (PARA 3(A) HAD BEEN PREVIOUSLY DISCUSSED IN THE COMMITTEE. REFTEL A) UK INTERVENTION SPARKED PROPOSAL BY PERU (DESOTO) TO CHANGE PARA 3 (B) INTO A NEW PARA, 3(BIS). PERU, SPEAKING ON BEHALF OF GROUP FO 77 THEN PROPOSED REPLACING THE FIRST SENTENCE OF THE NEW 3 (BIS) WITH THE FOLLOWING LANGUAGE. BEGIN TEXT "THE AUTHORITY SHALL ONLY OPEN FOR EXPLORATION AND EXPLOITATION THE PARTS OF THE AREA WHICH IT CONSIDERS TO BE OF SUFFICIENT COMMERCIAL INTEREST BASED ON SUFFICIENT SUPPORTING DATA." END TEXT PERU STATED THAT THIS LANGUAGE SHOULD NOT PREJUDICE THE QUESTION OF RETAINING THE CHAPEAU TO PARA 3 OF THE SNT IN RELATION TO PARA 3(A) - PROSPECTING. HE NOTED THAT CONFIDENTIAL

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PAGE 03 USUN N 01414 01 OF 02 062306Z

THE GROUP OF 77 POSITION CALLS FOR RETENTION OF THE CHAPEAU. U.S., UK AND FRANCE (MARTINASANE) OBJECTED TO PERU PROPOSALS.

4. PARA 4, (ENTERPRISE). PERU STATED THAT THE DETAILED DISCUSSION OF ACTIVITIES IN THE AREA IN THE FIRST PARAGRAPH OF PARA 4 ON THE ENTERPRISE WAS CONFUSING THAT INCONSISTENT WITH ARTICLE 1 (SNT) AND OTHER PARTS OF

ANNEX I. HE SUGGESTED THAT IT WAS ONLY NECESSARY TO HAVE ONE LIST OF ACTIVITIES IN THE AREA. PERU PROPOSED REFERENCING ARTICLE 9 IN PARA 4(E) SO THAT THE AUTHORITY, IN MARKETING THE RESOURCES EXTRACTED BY THE ENTERPRISE, PURSUANT TO SUBPARA (II), WOULD COMPLY WITH ANY COMODITY ARRANGEMENTS FALLING WITHIN ANY RELEVANT PROVISIONS OF ARTICLE 9. AUSTRALIA (WALLER) AGREED. U.S. AND UK REPS RESERVED COMMENT ON PARA 4 UNTIL DISCUSSION OF THE STATUTE OF THE ENTERPRISE.

5. PARA 6, PERU SUGGESTED DELETING FROM PARA 6(B) "FISCAL AND ADMINISTRATIVE" SINCE THESE WORDS COULD LIMIT THE AUTHORITY'S ABILITY TO CONTROL. U.S. REP OBJECTED TO USE OF THE TERM "CONTROL" WHICH IMPLIES THE AUTHORITY'S INVOLVEMENT IN DAY-TO-DAY MANAGEMENT OF A MINING OPERATION WHICH IS DIFFERENT THAN AN AUTHORITY ROLE IN SUPERVISION OF CONTRACTS IN ORDER TO ENSURE COMPLIANCE WITH ITS RULES AND REGULATIONS. REP PROPOSED SUBSTITUTING "SUPERVISION" FOR "CONTROL". USSR STATED THAT THEIR POSITION ON THE TERM, "CONTROL" DEPENDS UPON THE SYSTEM OF EXPLORATION AND EXPLOITATION. IRAQ, SUPPORTED BY PERU, OPPOSED U.S. SUGGESTION AND URGED THAT THE TEXT PROVIDE THE AUTHORITY WITH COMPREHENSIVE POWER TO CONTROL ACTIVITIES IN THE AREA.

6. PARA 7, (QUALIFICATION OF APPLICANTS). ACCORDING TO PLAN WORKED OUT IN SECRET BRAZIL GROUP, U.S. PROPOSED DELETION OF VAGUE REFERENCES TO OBJECTIVES OF THE AUTHORITY. KENYA (ADEDE) PROPOSED AS COMPROMISE NEW LANGUAGE FOR PARA 7, QUALIFICATION OF APPLICANTS, SUB-PARA (C) BEGIN TEXT: "EACH APPLICANT SHALL, IN ADDITION, SUBMIT TO THE AUTHORITY A WORK PROGRAM PREPARED IN ACCORDANCE WITH PARA 8(A)" END TEXT. THIS LANGUAGE
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PAGE 04 USUN N 01414 01 OF 02 062306Z

REQUIRES WORK PROGRAMS TO CONFORM WITH THE STATED RESOURCE POLICY AS ELABORATED IN PARA 8(A). (TEXT OF REVISED VERSION OF PARA 8(A) CONTAINED REF B).

7. JAPAN (SHIGETA) AND USSR RESERVED THE RIGHT TO COMMENT ON PARA 8(F) AND (G), THE AUOTA SYSTEM.

8. PARA 10 (DATA TRANSFER). PERU STATED THAT PARA 10, SHOULD APPLY TO PROSPECTING AS WELL AS EXPLORATION AND EXPLOITATION AND THAT PARA 10(A) SHOULD INCLUDE A SCHEDULE FOR THE TURNOVER OF DATA. U.S. REP POINTED OUT THAT SINCE THE ENTERPRISE WOULD BE COMPETING WITH OTHER CONTRACTORS, PARA 10 SHOULD BE AMENDED TO PROVIDE A GUARANTEE THAT ANY DATA WHICH IS TURNED OVER TO THE AUTHORITY WILL NOT BE RELEASED TO THE ENTERPRISE.

THAILAND, COMMENTED THAT U.S. CONCERN WITH DISCLOSURE OF DATA TO THE ENTERPRISE IS COVERED BY THE PROHIBITION ON DISCLOSURE TO THIRD PARTIES WHICH IS INCLUDED IN SNT TEXT OF PARA 10. U.S. REP FURTHER PROPOSED DELETION OF FINAL PHRASE IN 10(B) SO THAT THE SUBPARA WOULD READ BEGIN TEXT DRAW UP PROGRAMMES FOR THE TRAINING OF PERSONNEL. END TEXT. LATTER POINT WAS GENERALLY ACCEPTED.

9. PARA 11. PERU SUGGESTED ADDING TO THE SECOND SENTENCE OF PARA 11 THE WORDS: "EXCEPT FOR THE PROVISIONS IN PARAS 14,15, AND 16." THIS WOULD SUBJECT A CONTRACTOR'S SECURITY TO TENURE TO THE PROVISIONS OF PARA 14 (SUSPENSION OR TERMINATION), 15 (REVISION OF CONTRACT) AND 16 (FORCE MAJEURE). U.S. REP, SUPPORTED BY FRG AND JAPAN, REJECTED ANY REFERENCE TO PARA 15 AND 16 ON THE GROUNDS THAT IT WOULD SERIOUSLY ERODE THE CONCEPT OF SECURITY OF TENURE FOR A CONTRACTOR. U.S. REP INDICATED THAT U.S. COULD CONSIDER REFERENCE TO AN APPROPRIATELY FORMULATED PARA 14.

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PAGE 01 USUN N 01414 02 OF 02 062331Z

64

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C O N F I D E N T I A L SECTION 2 OF 2 USUN 1414

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PAGE 02 USUN N 01414 02 OF 02 062331Z

10. PARA 13. U.S. REP REITERATED POSITION REPORTED
PARA 5 ABOVE ON USE OF WORD "CONTROL" VICE "SUPERVISION".
REP ALSO NOTED DESIRABILITY OF DESIGNATING THE SPECIFIC
ORGAN OF THE AUTHORITY TO CARRY OUT INSPECTION FUNCTIONS.
REP INDICATED U.S. PREFERENCE FOR LOCATING THIS
FUNCTION IN THE TECHNICAL COMMISSION.

11. PARA 14, (SUSPENSION OR TERMINATION). IN AN INTER-
VENTION PREARRANGED BY THE SECRET BRAZIL GROUP, NORWAY
(VINDENES) SUGGESTED ADDING A SECOND SECTION TO PARA 14
(SUSPENSION OR TERMINATION). BEGIN TEXT: "IN CASES OF
VIOLATIONS OF THE AUTHORITY'S REGULATIONS TO PROTECT
THE MARINE ENVIRONMENT, THE AUTHORITY MAY ALSO PROHIBIT
THE VIOLATOR FROM CONDUCTING OPERATIONS FOR A REASONABLE
PERIOD OF TIME. WHERE THERE IS EVIDENCE THAT THE
VIOLATOR WILL CAUSE SERIOUS HARM TO THE MARINE ENVIRONMENT
THE AUTHORITY SHALL INSURE THAT OPERATIONS ARE
NOT REOPENED UNTIL THE CONTRACTOR COMPLIES WITH THE
REGULATIONS CONCERNED. END TEXT. U.S. , NETHERLANDS,
PERU, FRG, SINGAPORE(KIH), POLAND AND FRANCE AGREED
THAT PARA 14 SNT, (SUSPENSION AND TERMINATION), SHOULD
BE REVISED TO PROVIDE THAT VIOLATIONS SHOULD BE PUNISHABLE
BY PENALTIES COMMENSURATE WITH THEIR SERIOUSNESS
AND THAT ONLY GROSS AND PERSISTENT VIOLATORS WOULD BE
SUBJECT TO SUSPENSION OR TERMINATION. LESSER VIOLATIONS
WOULD BE PUNISHABLE BY MONETARY FINES. U.S.,
KUWAIT, SIR LANKA (PINTO) , NETHERLANDS, FRG, SINGAPORE,
TURKEY AND SPAIN REGISTERED STRONG SUPPORT FOR PROVIDING

IN CASES OF SUSPENSION OR TERMINATION DUE PROCESS OF LAW PROTECTIONS THROUGH THE DISPUTE SETTLEMENT PROCEDURES. PERU ON BEHALF OF GROUP OF 77 PROPOSED CHANGING THE "GROSS AND PERSISTENT" STANDARD TO "GROSS OR RPT OR PERSISTENT" VIOLATIONS.

12. PARA 15, (REVISION OF CONTRACTS). PERU ON BEHALF OF GROUP OF 77 PROPOSED LANGUAGE FOR PARA 15. BEGIN TEXT: "ANY AGREEMENT PURSUANT TO ARTICLE 22 PARA 2 CAN BE RENEGOTIATED UPON THE REQUEST OF ANY PARTY IF: (1) A CONTRACT IS FOUR YEARS OLD OR AT 4-YEAR INTERVALS, THEREAFTER, (2) IT IS NECESSARY TO AMEND THE TERMS AND CONDITIONS WHICH HAVE BECOME UNJUST OR WHICH NO LONGER

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PAGE 03 USUN N 01414 02 OF 02 062331Z

MEET THE ORIGINAL OBJECTIVES. (3) CIRCUMSTANCES ARISE WHICH MAKE THE OBJECTIVES OF THE AGREEMENT IMPOSSIBLE OR IMPRACTICAL. END TEXT. U.S. REP SUPPORTED BY FRG AND FRANCE COUNTERED THAT THE TERMS AND CONDITIONS OF THE CONTRACT MUST BE BOTH PREDICTABLE AND PROVIDE AN ASSURANCE THAT THE OPERATOR WILL BE ABLE TO COMPLETE THE CONTRACT ON THE BASIS OF THE ORIGINAL TERMS TO WHICH HE AGREED. ZAMBIA ARGUED THAT EITHER PARTY SHOULD HAVE THE RIGHT TO RENEGOTIATE THE CONTRACT AND AGREED WITH THE VIEW OF THE GROUP OF 77 AS STATED BY PERU. U.S. REP POINTED OUT THAT THE CONCERNS RAISED BY GROUP OF 77 RELATED TO A DESIRE TO AVOID WINDFALL PROFITS. REP SUGGESTED THIS SUBJECT SHOULD BE DEALT WITH UNDER THE FINANCIAL ARRANGEMENTS IN PARA 9(D).

13. PARA 16, (FORCE MAJEURE). PERU PROPOSED ADDING TO THE END OF THE FIRST SENTENCE IN PARA 16 THE WORDS "FORTUITOUS CIRCUMSTANCES" IN ORDER TO CLARIFY FURTHER THE KINDS OF DELAYS WHICH ARE EXCUSABLE.

14. PARA 18, (APPLICABLE LAW). U.S. REP STATED THAT PARA 18 SHOULD BE AMENDED TO INCLUDE REFERENCE TO "OTHER APPLICABLE RULES OF LAW." U.S. FRG AND USSR SUPPORTED DELETING THE LAST TWO SENTENCES OF PARA 18.

15. PARA 19, LIABILITY). U.S. REP STATED THAT ACCEPTANCE OF PARA 19 WOULD DEPEND UPON THE FORM OF THE CONTRACT.

16. U.S. REP RESERVED COMMENT ON PARA 20 (DISPUTE SETTLEMENT AND 21 (PROVISIONAL APPLICATION). UK PROPOSED DELETING PARA 20 AND 21. USSR AND BULGARIA AGREED WITH PROPOSAL TO DELETE PARA 21.

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